

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

NIPPON SHINYAKU CO., LTD., Plaintiff,)	
v.)	
SAREPTA THERAPEUTICS, INC.,)	C.A. No. 21-1015 (GBW)
Defendant.)	
SAREPTA THERAPEUTICS, INC.,)	
Defendant and Counter-Plaintiff, and)	
UNIVERSITY OF WESTERN)	
AUSTRALIA, Counter-Plaintiff)	
v.)	[REDACTED]
NIPPON SHINYAKU CO., LTD., Plaintiff)	
and Counter-Defendant and)	
NS PHARMA, INC., Counter-Defendant.)	

**NIPPON SHINYAKU CO. AND NS PHARMA, INC.'S
OPENING LETTER BRIEF REGARDING DISCLOSURE OF SAREPTA-
DESIGNATED INFORMATION TO DR. MATTHEW J.A. WOOD**

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Nippon Shinyaku Co., Ltd. and Counterclaim
Defendant NS Pharma, Inc.*

Dated: August 3, 2023

Judge Williams:

Pursuant to the Court's July 28, 2023 Oral Order (D.I. 289), Nippon Shinyaku Co., Ltd. and NS Pharma, Inc. (collectively, "NS") hereby submit their letter brief regarding whether NS should be permitted to disclose information that Sarepta Therapeutics, Inc. ("Sarepta") and the University of Western Australia ("UWA") have designated as confidential or highly confidential under the terms of the Protective Order entered in this action (D.I. 117) to its expert Matthew J.A. Wood, PhD. Dr. Wood is a professor of Neuroscience at the University of Oxford with extensive research experience in the field of exon skipping therapies. Dr. Wood previously [REDACTED]

[REDACTED] Sarepta and UWA are separately moving to disqualify Dr. Wood from serving as an expert for NS. This letter concerns only issue of whether Sarepta and UWA have met their burden of proving that the risk of harm outweighs NS's need to disclose Protected Material to Dr. Wood.

Under the parties' Stipulated Protective Order there are three levels of confidentiality: Confidential Information, Highly Confidential Information, and Outside Counsel Eyes Only Information. D.I. 117 §§ 7.2, 7.3, 7.5. A party seeking to disclose Confidential, Highly Confidential, or Outside Counsel Eyes Only Information to an expert must provide a written request to the designating party. *Id.* § 7.6(a). The requesting party may disclose Protected Material to the identified expert unless the designating party must make a written objection within seven days detailing the grounds on which the objection is based. *Id.* § 7.6(b). If the parties cannot resolve the matter, the party seeking disclosure to the expert may contact the Court to resolve the dispute. *Id.* § 7.6(c). "The Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert." *Id.*

On May 31, 2023, NS disclosed to Sarepta and UWA that it intended to disclose Protected Material to expert Mathew JA Wood. Exhibit A. On June 1, 2023, Sarepta and UWA objected to NS disclosing any Protected Material to Dr. Wood and to Dr. Wood serving as NS's expert in any capacity. *Id.* Sarepta and UWA stated that Dr. Wood [REDACTED]

[REDACTED] *Id.* Sarepta and UWA did not, however, provide [REDACTED] or identify any harm that disclosure of Protected Material to Dr. Wood would entail or provide any reasons why such harm would outweigh NS's need to disclose the Protected Material to Dr. Wood. Accordingly, Sarepta and UWA have not met their burden of proving that the risk of harm outweighs NS's need to disclose Protected Material to Dr. Wood so that he can freely serve as NS's expert.¹

¹ Should Sarepta or UWA identify any harm, NS would consider limiting the Protected Material it discloses to Dr. Wood to alleviate such harm.

Sarepta and UWA’s general statement that Dr. Wood “[REDACTED]
[REDACTED]” says nothing about any harm they may encounter by the disclosure of Protected Material to Dr. Wood. Dr. Wood is a professor at the University of Oxford—he is not engaged in decision-making for NS or any other Sarepta competitor in any capacity, much less decision-making related to research and development of antisense oligonucleotides for skipping Exon 53. Thus any alleged harm resulting from Dr. Wood’s access to any of Protected Material related to golodirsen or the asserted UWA Patents is speculative at best. *See, e.g., Advanced Micro Devices, Inc. v. LG Electronics, Inc.*, No. 14-cv-1012-SI, 2017 WL 3021018, at *2-3 (N.D. Cal. July 17, 2017) (allowing disclosure to experts where disclosing party “provided no concrete evidence that either [expert] engages in or assists with competitive decision-making at [a] competitor”).

Any perceived harm that Sarepta and UWA asserts can be adequately addressed and protected by the restrictions contained in the Protective Order. Dr. Wood has agreed to be bound by the Protective Order. Exhibit B. Sarepta and UWA have not challenged Dr. Wood’s ability to abide by the Protective Order. Indeed, Sarepta indicated that it has [REDACTED]
[REDACTED] to Dr. Wood, although it is unclear to NS whether [REDACTED]
[REDACTED] because NS does not know anything about it. Regardless, Dr. Wood has not disclosed any confidential Sarepta or UWA information to NS or any other party. Dr. Wood thus is undoubtedly able to abide by the Protective Order in this matter.

* * *

For these reasons, the Court should permit NS to disclose Sarepta-designated confidential and highlight confidential information to NS’s expert Dr. Wood.

August 3, 2023

Respectfully submitted,

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